

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD STICKNEY,

Plaintiff,

v.

CALIFORNIA GRAND CASINO, INC., LAMAR  
V. "WILL" WILKINSON, and DOES 1-25,  
inclusive,

Defendants.

No. C 04-3552 CW

ORDER REGARDING  
ATTORNEYS' FEES

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Plaintiff Richard Stickney moves for an award of attorneys' fees in the amount of \$68,364, a 1.5 multiplier and litigation expenses and costs in the amount of \$6,516. Defendants California Grand Casino, Inc., and Lamar V. Wilkinson oppose the motion. The matter was submitted on the papers. Having considered all of the papers filed by the parties, the Court GRANTS Plaintiff's motion in part, awarding attorneys' fees in the amount of \$62,752 and litigation expenses and costs in the amount of \$6,516.

BACKGROUND

Defendants own and operate a casino in Pacheco, California. Plaintiff, a person with a disability who uses a wheelchair, alleges that when he attempted to patronize the casino, he discovered numerous aspects of the facility that were not accessible to him, including the parking lot, entrance, bar area and restroom. On August 25, 2004, Plaintiff filed a complaint, on

1 behalf of himself and others similarly situated, alleging  
2 violations of (1) California Civil Code §§ 54 and 54.1;  
3 (2) California Civil Code §§ 51 and 52; and (3) Title III of the  
4 Americans with Disabilities Act (ADA). On November 1, 2005,  
5 Defendants filed an answer denying liability and pleading, in a  
6 conclusory fashion, forty-seven affirmative defenses, including  
7 that the casino was an historical landmark not subject to the ADA.

8 The parties held a joint site inspection on March 7, 2005.  
9 Plaintiff's expert Peter Margen prepared a report based on the  
10 results of the inspection.

11 After three settlement conferences with Magistrate Judge  
12 Maria-Elena James which focused on the scope of injunctive relief,  
13 the parties reached a settlement agreement. Defendants agreed to  
14 pay Plaintiff a total of \$15,000 in civil rights and personal  
15 injury damages. Defendants also agreed to make various  
16 modifications to their facility, including installation of  
17 accessible parking spaces, an accessible path of travel from the  
18 public sidewalk, wheelchair seating at the bar, a unisex accessible  
19 restroom and a lower chip teller window and public phone. See Rein  
20 Decl., Ex. 1, Consent Decree and Order, Attachment A. The  
21 agreement provided that attorneys' fees would be decided by further  
22 negotiation or motion to the Court. The Court entered judgment on  
23 September 13, 2005, reserving the issue of attorneys' fees for a  
24 post-judgment motion.

25 Plaintiff now moves to recover attorneys' fees in the amount  
26 of \$68,364 with a 1.5 multiplier. Thus, Plaintiff requests a total  
27 of \$102,546 in fees. In support of his request for fees, Plaintiff  
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1 submits declarations and time records indicating the hours billed  
 2 by his attorneys and their staff. The declarations also state each  
 3 attorney's hourly billing rate and years of experience. In  
 4 particular, Mr. Rein and Ms. Barbosa have many years of experience  
 5 in the field of disability access litigation. The following is a  
 6 summary of this information:

<u>Attorney/Staff</u>	<u>Hours Worked</u>	<u>Hourly Rate</u>	<u>Total</u>
Paul Rein	86.9	\$435	\$37,801
Patricia Barbosa	34.2	\$375	\$12,825
Julie McLean	65.2	\$250	\$16,300
Scott Holmes	11.5	\$125	\$1,438

12 In addition to these fees, Plaintiff requests reimbursement  
 13 for \$6,516 in litigation expenses and costs.

#### 14 LEGAL STANDARD

15 Plaintiff seeks attorneys' fees, litigation expenses and costs  
 16 as the prevailing party pursuant to the ADA. Under the ADA's fee  
 17 shifting provision, Plaintiff may be awarded, in the Court's  
 18 discretion, "a reasonable attorney's fee, including litigation  
 19 expenses, and costs." 42 U.S.C. § 12205. Alternatively, Plaintiff  
 20 seeks fees, expenses and costs because he obtained a result in the  
 21 public interest pursuant to § 1021.5 of the California Code of  
 22 Civil Procedure and §§ 54.3 and 55 of the California Disabled  
 23 Persons Act. The Court analyzes Plaintiffs' motion under the ADA  
 24 standard, and discusses California law only where it provides for  
 25 recovery different than the ADA. Barrios v. Cal. Interscholastic  
 26 Fed'n, 277 F.3d 1128, 1137 (9th Cir. 2002).

27 If the district court determines that an applicant is a  
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1 prevailing party who should be awarded attorneys' fees, it must  
2 determine what fees are reasonable. Barrios, 277 F.3d at 1134. In  
3 the Ninth Circuit, reasonable attorneys' fees are determined by  
4 first calculating the "lodestar." Jordan v. Multnomah County, 815  
5 F.2d 1258, 1262 (9th Cir. 1987). "The 'lodestar' is calculated by  
6 multiplying the number of hours the prevailing party reasonably  
7 expended on the litigation by a reasonable hourly rate." Morales  
8 v. City of San Rafael, 96 F.3d 359, 363 (9th Cir. 1996). There is  
9 a strong presumption that the lodestar figure represents a  
10 reasonable fee, Jordan, 815 F.2d at 1262; however, the district  
11 court may adjust the award from the lodestar figure upon  
12 consideration of additional factors that may bear upon  
13 reasonableness. Kerr v. Screen Guild Extras, Inc., 526 F.2d 67, 70  
14 (9th Cir. 1975).

15 Determining a reasonable hourly rate is a critical inquiry.  
16 Jordan, 815 F.2d at 1262 (citing Blum v. Stenson, 465 U.S. 886, 895  
17 n.11). In establishing the reasonable hourly rate, the district  
18 court should take into account (1) the novelty and complexity of  
19 the issues, (2) the special skill and experience of counsel,  
20 (3) the quality of representation, (4) the results obtained,  
21 Cabrales v. County of Los Angeles, 864 F.2d 1454, 1464 (9th Cir.  
22 1988), and (5) the contingent nature of the fee agreement. City of  
23 Burlington v. Dague, 505 U.S. 557, 562-63 (1992). These factors  
24 are subsumed in the initial lodestar calculation, and should not  
25 serve as independent bases for adjusting fee awards. Morales, 96  
26 F.3d at 363-64. Reasonable fees are generally calculated according  
27 to the prevailing market rates in the forum district. Gates v.  
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1 With respect to the 26.2 hours spent in conference with one  
2 another (including 10 hours by Ms. Barbosa, 8.4 hours by Mr. Rein  
3 and 7.8 hours by Ms. McLean), the Court finds that the time billed  
4 is not unreasonable considering the length of the case and the  
5 amount of negotiation involved in reaching the settlement  
6 agreement. Defendants' objection to the amount of time spent by  
7 Plaintiff's attorneys in conference is overruled.

8 With respect to the amount of time spent drafting and  
9 reviewing the complaint, the Court finds that the six hours spent  
10 by Ms. McLean is not excessive. The three hours each spent by Mr.  
11 Rein and Ms. Barbosa in reviewing the complaint, however, is  
12 somewhat duplicative and excessive. Therefore, the Court reduces  
13 by 1.5 hours each the amount of time reasonably spent by Mr. Rein  
14 and Ms. Barbosa reviewing the complaint.

15 Finally, Defendants object to the amount of time spent on the  
16 May 3, 2005 conference. According to the minute entry, this  
17 meeting lasted just one and a half hours. See Docket No. 11.  
18 According to their declarations, Mr. Rein spent 5.2 hours and Ms.  
19 Barbosa spent 5.1 hours traveling to San Francisco, holding a post-  
20 conference meeting with their client, and returning to their  
21 Oakland office. Rein Decl., Ex. 6, at 4; Barbosa Decl., Ex. 1, at  
22 4. In addition, the day before, Ms. Barbosa spent three hours and  
23 Mr. Rein spent at least two hours preparing for the settlement  
24 conference (in addition to significant amounts of time spent  
25 earlier to prepare the settlement proposal). According to counsel  
26 for Defendants, the time spent at this settlement conference was  
27 wasted because Plaintiff did not serve Defendants with a demand in  
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time for Defendants to review it ahead of time. Johnson Decl.

¶ 11. Plaintiff generally denies causing any unnecessary delay in the case, but Mr. Rein and Ms. Barbosa do not deny failing to serve Defendants with a demand in a timely manner. Under the circumstances of the case, however, the Court finds that the amount of time Ms. Barbosa and Mr. Rein spent preparing for the first settlement conference, traveling to San Francisco, and meeting afterwards with their client is reasonable. Nor does the fact that two attorneys participated on Plaintiff's behalf mean that their hours were excessive. See McGrath v. County of Nevada, 67 F.3d 248, 255 (9th Cir. 1995) (quoting Kim v. Fujikawa, 871 F.2d 1427, 1435 n.9 (9th Cir. 1989)) ("the participation of more than one attorney does not necessarily constitute an unnecessary duplication of effort"). Accordingly, the Court finds that the time spent in connection with the May 5 settlement conference was reasonable.

In sum, the Court finds that Mr. Rein reasonably spent 85.4 hours, Ms. Barbosa reasonably spent 32.7 and Ms. McLean reasonably spent 65.2 hours on this case.<sup>1</sup>

## II. Hourly Rate

Defendants argue that Plaintiff's counsel's rates are unreasonable because this was not a complex case.

This Court has previously found rates of \$395, \$345 and \$125 per hour to be reasonable in the San Francisco Bay Area market for

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<sup>1</sup>This order addresses the total fees to which Plaintiff is entitled. Although the Court discusses each attorney's hours individually, it does so only to calculate the amount of Plaintiff's award. The Court does not decide how the fees should be divided amongst Plaintiff's attorneys.

1 Mr. Rein, Ms. Barbosa and Mr. Holmes, respectively, in light of  
2 each attorney's education, experience, knowledge and  
3 qualifications, for work done in 2000 through 2004. See George v.  
4 Bay Area Rapid Transit District, No. C 00-2206 CW (N.D. Cal., Mar.  
5 18, 2004), Order Granting in Part Pls.' Mot. for Att'ys Fees, 13-  
6 17.

7 Mr. Rein and Ms. Barbosa now state that their hourly rates  
8 have increased in 2005 to \$435 and \$375, respectively. However,  
9 they have not submitted any evidence to support these recent  
10 increases. In fact, according to Plaintiff's "Statement of Bases  
11 for Public Interest Attorney Fee Rates for Years 2005-2006," Rein  
12 Decl., Ex. 5, it would appear that in another case also filed in  
13 2004, Marvin Huevo v. Sizzler USA, Inc., No. CV 04-4868 (C.D. Cal  
14 2005), Judge Audrey Collins approved rates of \$395 and \$345 for Mr.  
15 Rein and Ms. Barbosa.

16 Furthermore, as Defendants argue, this was a straightforward  
17 case in which no motion practice was needed, in contrast to most of  
18 the other cases cited by Plaintiff as evidence to support their  
19 requested billing rates, and it presented no difficult or novel  
20 issues that would warrant a higher hourly rate. Plaintiff disputes  
21 this characterization, noting that, to Plaintiff's counsel's  
22 knowledge, this is the first successful access case brought against  
23 a California gambling casino. However, Plaintiff does not explain  
24 how this made it more complex than any of the many other types of  
25 access cases which Plaintiff's counsel have litigated in the past.  
26 Nor does the fact that Defendants denied all liability render this  
27 an especially complex or difficult case, in light of the parties'



1 ability to settle without motion practice.

2 Therefore, the Court finds that \$395 is still a reasonable  
3 rate of compensation for Mr. Rein, and \$345 is a reasonable rate of  
4 compensation for Ms. Barbosa.

5 Julie McLean is an associate attorney who has worked at the  
6 Law Offices of Paul L. Rein since 2003. McLean Decl. ¶ 3. She  
7 previously worked at the Deaf Women's Legal Project at the Law  
8 Center for Families in Oakland. Id. She is a 1997 graduate of  
9 Boalt Hall School of Law at the University of California at  
10 Berkeley. Id. She states that her current billing rate of \$250  
11 per hour was approved by the court in Marvin Huezo v. Sizzler USA,  
12 Inc., CV 04-4868 ABC (C.D. Cal.). Id. ¶ 10. The Court finds that  
13 Ms. McLean's \$250 per hour billing rate is reasonable.

14 III. Multiplier

15 Plaintiff asks that the Court enhance the fee award by a 1.5  
16 multiplier pursuant to California Civil Code § 1021.5. A  
17 multiplier is available to recognize factors not already included  
18 in the lodestar calculation, such as "extraordinary skill."  
19 Ketchum v. Moses, 24 Cal. 4th 1122, 1138 (2001). Plaintiff's  
20 request is based on the risk incurred by pursuing this action on a  
21 contingent basis, the public interest outcome of this case, the  
22 results obtained and the preclusion of other employment while  
23 working on this case. Although it is within the Court's discretion  
24 to award such an enhancement, the Court does not find that such a  
25 multiplier is justified here. While Plaintiff's counsel did take  
26 this case on a contingent basis and were successful in litigating  
27 it, their risks and results are not extraordinary. Therefore,

1 Plaintiff's request for a multiplier is denied.

2 IV. Litigation Expenses and Costs

3 Recovery of reasonable litigation expenses and costs is  
4 specifically authorized under the ADA. 42 U.S.C. § 12205. These  
5 expenses may include expert consultant fees. Plaintiff seeks  
6 litigation expenses and costs in the amount of \$6,516, including  
7 \$5,402 for Mr. Margen's consulting fees. Mr. Margen surveyed the  
8 casino and prepared a report on his findings, billed at a rate of  
9 \$185 per hour. The Court finds this amount to be reasonable.

10 CONCLUSION

11 For the foregoing reasons, the Court GRANTS in part  
12 Plaintiff's motion for attorneys' fees, litigation expenses and  
13 costs (Docket No. 28). The Court awards Plaintiff \$62,752 in  
14 attorneys' fees, and \$6,516 in litigation expenses and costs.  
15 Defendants shall pay this amount forthwith unless the parties  
16 stipulate otherwise.

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18 IT IS SO ORDERED.

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20 Dated: 7/10/06

  
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CLAUDIA WILKEN  
United States District Judge